

RELIGIOUS FREEDOM IN INDONESIA

Between Upholding Constitutional Provisions and Complying with Social Considerations

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Abstract: Human rights, including freedom of religion, are generally accepted and granted by all governments regardless of their ideology, political, economic, and social conditions. In a Muslim majority country such as Indonesia, ideally freedom of religion is considered to mean that the government allows religious practices of religious minorities or other sects besides the state religion, and does not persecute believers in other faiths. This paper discusses Indonesia's constitutional provisions concerning legal rights of citizens on freedom of religion, whether the government upholds the constitution as a concrete way to deal with human rights protection or it complies with some groups' demand to tighten restrictions on "the Western concept of" religious liberty. This paper concludes that even though there are many provisions in the Indonesia's constitution and in its legal system which is supportive of religious freedom, some governmental provisions were enacted based on social considerations, rather than to strengthen constitutional provisions.

Keywords: Religious Freedom, Human Rights, Indonesia's Constitution

Introduction

Religious freedom can be considered as one of the most fundamental human rights, because this right is one of the manifestations of personal liberty which comes from the most inner part of humans. In this way, interference with the freedom of religion and belief will often be experienced as grave violations. Thus, everyone must have the freedom to observe and to practice his/her faith

without fear of or interference from others. The general idea of preserving the rights of religious freedom lies in the history of protecting religious minorities, and, even though the right to religious freedom is considered the foundation of Western human rights ideology, it is universally acceptable as one of the foundations of a democratic society. In a Muslim majority country, such as Indonesia, ideally freedom of religion is considered to mean that the government allows religious practices of religious minorities or other sects besides the state religion, and does not persecute believers in other faiths.

However, in practice, religious minorities in Muslim countries suffer from restrictions on this right. In Indonesia for example, a new Indonesian decree to regulate places of religious worship which is arguably favor the local religious majority. It has been drawn criticism from groups ranging from Christians to minority Islamic sects such as Ahmadiyah and it has also been challenged in an appeal to the country's Supreme Court.

Moreover, on June 9, 2008, Religious Affairs Ministry, Home Ministry, and Attorney General signed a joint-decree ordering the Ahmadiyah community to "stop spreading interpretations and activities which deviate from the principal teachings of Islam," including "the spreading of the belief that there is another prophet with his own teachings after Prophet Mohammed." Violations of the decree are subject to up to five years of imprisonment. Human rights groups have jumped to the defense of Ahmadiyah, encouraging the group to log in a judicial review of the 1965 law with the Constitutional Court and the decree with the Supreme Court. In addition, establishment of worship places becomes more difficult for minority religions. Christians in Indonesia, for example, feel increasingly uneasy, especially after some Islamists forced several unofficial houses of worship to shut down.

This paper examines the possibility of Indonesia's constitutional provisions concerning religious rights of citizens to be a concrete way to deal with human rights protection. The paper will be divided into three parts. The first one describes religious freedom in the Indonesia's constitution. The second part examines freedom of religion in Islam. This part is included because Indonesia is the biggest Muslim majority country in the world, which is influenced, more or less, by Islamic values. The third part deals with the real application of the

constitutional rights of religious freedom, in which some restrictions on religious freedom in Indonesia are applied.

Religious Freedom in the Indonesia's Constitution

Indonesia is a predominantly Muslim country with secular state. The absence of any reference to Islam in the 1945 Constitution shows that Indonesia is open to all religions. This is in accordance with international human rights norms which stipulate, among other things, that the government is not only prohibited from limiting religious freedom, it is also unacceptable, according to International standards of democracy, to endorse a particular religion.

The Constitution of Indonesia provides for freedom of religion, and the government generally respected this right in practice, particularly since the amendment to the Indonesia's constitution in 2000. Freedom of religion is a mandate of the Indonesia's constitution (the 1945 Constitution), of which article 29(2) declares that "the State guarantees the freedom of every citizen to embrace their religion and to worship according to their religion and conviction". This is reinforced with article 28E, introduced by an amendment to the 1945 Constitution, which states that "[e]very person shall be free to embrace and to practice the religion of his or her choice", and "every person shall have the right to the freedom to hold beliefs, and to express his or her views and thoughts, in accordance with his/her conscience".¹ The constitutional provisions were then reinforced with Indonesia's ratification of the International Covenant on Civil and Political Rights in 2006 and its subsequent incorporation into domestic law.²

In addition to the constitutional provision above, Law No 39/1999 on Human Rights states in article 22(1) that "every person is free to profess their religion and to worship in accordance with their religion and conviction", and also based on article 22(2), the freedom to profess one's religion and to practice one's convictions and beliefs are guaranteed by the state.

Indonesia was admitted as a member of the United Nations following its independence. As a member state, Indonesia is governed

¹ Article 28E (1) and (2).

² Asian Human Rights Commission (AHRC), 2006. "Indonesia: Ratification of Key Human Rights Instruments Must be Followed by Legal Reform", a Statement by the Asian Human Rights Commission, retrieved from: <<http://www.ahrchk.net/statements/mainfile.php/2006statements/457/>>

by the United Nations Charter. Article 55 of the UN Charter proclaims one of the purposes of the UN Charter as being to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.³ Pursuant to article 56 of the UN Charter, “all members of the United Nations pledge to take joint and separate action in cooperation with the United Nations for the achievement of the purposes set forth on article 55”.⁴

The General Assembly of the United Nations considered that the UN Charter obliged member states to promote human rights and condemned those who violated such rights.⁵ It is important to observe that the UN Charter recognized the entitlement of human beings to rights by reason of their humanity alone. It means that the dominant approach to the normative foundations of international human rights standards regards human rights as moral entitlements that all human beings possess by virtue of their common humanity.⁶

However, the maximum level, or common standard, of the protection of human rights can be seen in the text of the Universal Declaration of Human Rights (UDHR). The UDHR lists numerous rights to which people everywhere are entitled, but the UDHR is not a legal document which has legally binding force. In fact, it is only a general statement of principles, which has power in the world of public opinion. Its principles have been translated into legal force such as systems of law which aim to protect human rights. These systems, laws and instruments have predominantly been developed and administered by the United Nations (UN). These include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), along with various treaties that make up the international human rights regime, which

³ Charter of the United Nations (1945)

⁴ Ibid.

⁵ UN General Assembly Resolution 719 (VII); 1953, and UN General Assembly Resolution 285 (111); 1949.

⁶ Patrick Macklem, “What is International Human Rights Law? Three Applications of a Distributive Account,” Bernard and Audre Rapoport, Center for Human Rights and Justice University of Texas School of Law, November 19, 2007, retrieved from: <http://www.utexas.edu/law/academics/centers/humanrights/publications/macklem_texas_paper.pdf>

have been ratified by more than 190 countries.⁷ According to international law, international treaties which have been ratified must be implemented by state parties in good faith by committing themselves to making laws in their country to protect these human rights. However, over half the countries of the world have not ratified the ICCPR or the ICESCR or other international human rights treaties.⁸

It is normally fruitless to compare basic human rights with each other, to find the most important right or the most dignified right. However, it is worth pointing out, together with the historical facts, that religion and thought constitute the most inner part of human. A belief in a specific religion, if we look at the individuals own grounds for adopting and manifesting a specific belief, will often include belief in a divine god or other divine objects, with power over the life of each person. Therefore, the choice of religion is not the same as a choice between politics and other kinds of opinions. It is the right for anyone within a state, whilst reflecting its values, which are called laws and social norms, to choose to worship in their own way.⁹ Moreover, for many people, a religion is not only a set of belief, but also it needs to be translated into their actions, which of course cannot have repercussions for other people.¹⁰

Historically freedom of religion was regarded as one of the first recognized human rights, whose general idea lies in the history of protecting religious minorities.¹¹ Therefore, religious freedom is a vital human right and an essential component of democracy. In this context, one can state that the denial of religious freedoms not only construes an individual and personal tragedy, but also creates conditions of social and political unrest, sowing the seeds of violence

⁷ Todd Landman, *Protecting Human Rights: A Comparative Study* (Washington DC: Georgetown University Press, 2005), p. 60.

⁸ Electronic Resource Centre for Human Rights Education, retrieved from: http://www-hrea.org/erc/Library/First_Steps/part1_eng.html

⁹ "Freedom of Religion: A Report with Special Emphasis on the Right to Choose Religion and Registration Systems," *Forum 18*, retrieved from: <http://www.forum18.org/-PDF/freedomofreligion.pdf>

¹⁰ Brice Dickson, "The United Nations and Freedom of Religion," *International and Comparative Law Quarterly*, vol. 44, issue 2 (1995), p. 327.

¹¹ "Freedom of Religion".

and conflict within and between societies and nations.¹² The United Nations recognizes the importance of safeguarding human integrity, freedom and equality to ensure that there is some remedy available to persecuted person.¹³ Even though the right to freedom of thought, conscience and religion is considered the foundation of Western human rights ideology, it is one of the foundations of a democratic society. In a country with an official state religion, freedom of religion is generally considered to mean that the government allows religious practices of religious minorities or other sects besides the state religion, and does not persecute believers in other faiths.¹⁴

Religious liberty has been recognized and enshrined in a number of international legal documents. For example, article 18 of the Universal Declaration of Human Rights 1948 (UDHR) states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

This provision has been adopted by the ICCPR (in article 18),¹⁵ which makes state parties are obliged to guarantee the religious liberty of their citizens to embrace and practice the religion or belief of their choice. This provision (both in the UDHR and the ICCPR) does not permit any limitations whatsoever. The freedoms of thought and conscience or to have or to adopt a religion or belief of one's choice are protected unconditionally.¹⁶

Similar provisions are also recognized by the UN Declaration on the elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the Intolerance Declaration), proclaimed

¹² M. Zamir, *Human Rights Issues and International Law* (Dhaka: University Press, 1990), p. 1.

¹³ Richard Pierre and Burns H. Weston (eds), *Human Rights in the World Community: Issues and Action* (Philadelphia: University of Pennsylvania Press, 2006).

¹⁴ "Freedom of Religion".

¹⁵ ICCPR article 18 (1): Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

¹⁶ Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Burlington, VT: Ashgate Publisher, 2002), p. 11.

in 1981. The preamble to the Intolerance Declaration reaffirms the principles of religious freedom and belief provided by the UN Charter, the UDHR, the ICCPR and the ICESCR. Article 6 of the Intolerance Declaration sets out those rights attached to religious freedom, including the freedom to worship or assemble and maintain appropriate places for these purposes and the freedom to communicate nationally and internationally on religious matters. Moreover, Article 2(2) of the Intolerance Declaration prohibits unintentional as well as intentional acts of discrimination and applies to not only public life but also to the private sphere. Article 4 and 7 of the Declaration requires state to take positive measures, including the introduction of legislation, to rectify any form of intolerance and discrimination on the grounds of religion and belief.

Since its adoption, the UDHR has stood alone as an international standard of achievement for all people and all nations. It is universally known and accepted as authoritative in state which become parties to one or both covenants and also in those which did not ratify or accede to either. Therefore, there is no nation that can claim to do as it pleases in the manner of denial of justice and human rights on the grounds that its treatment of citizens is exclusively within its domestic jurisdiction. This outdated view is unacceptable to the current international community. In this context, a state which has elected not to ratify the covenants should be obliged to recognize the fundamental rights contained in the UDHR and expanded upon in the covenants. This view is reflected by the fact that many human right laws operate to oblige a state to refrain from causing harm to its own nationals or to other persons within its territorial jurisdiction.¹⁷ Consequently, the impacts of the United Nations and related treaty regimes have been so powerful that a general obligation to respect human rights is now a rule of *jus cogens*,¹⁸ which is a peremptory rule that cannot be derogated except by similar new rules developed by international law.¹⁹

As a result, the notion of human rights plays a prominent role in international development cooperation, because its increased

¹⁷ M. Dixon, *Textbook on International Law*, 3rd edition (London: Blackstone, 1996), p. 307.

¹⁸ Ibid., p. 312.

¹⁹ Natan Lerner, "Religious Human Rights Under the United Nations," in John Witte, Jr. and D. van der Vyver. (eds), *Religious Human Rights in Global Perspective: Legal Perspective* (The Hague: Martinus Nijhoff Publishers, 1996), p. 82.

importance has been given to linking development and human rights. However, even though the concept of human rights plays an important role in international level, in practice international factors actually have little or even no effect on domestic respect for human rights. Camp Keith, for example, argues that there is no statistical correlation between ratification of the International Covenant for Civil and Political Rights and increased respect for human rights.²⁰ Similarly, Hathaway's study of various international human rights treaties, confirms these findings. Hathaway concludes that treaty ratification is not only ineffective, but at times can actually produce negative results: "treaty ratification is not infrequently associated with worse, rather than better, human rights ratings than would otherwise be expected".²¹ Landman also comes to question the true effectiveness of international human rights covenants. Specifically, he finds that the effect of signing or ratifying these covenants on domestic respect for human rights is not quite strong which may impart optimism about the future effectiveness of international human rights covenants.²² Hathaway points out that the lack of effectiveness of the ratification of human rights treaties may be because the covenants are simply complementing the effect of simultaneous domestic processes of democratization, increasing wealth, and growing interdependence.²³

The lack of the effectiveness of some human rights treaties implementation is more visible in Muslim countries. This may be because religious liberty supposedly burdens some Muslim states with a competence to protect indigenous religions of the majority by the prohibition of apostasy and proselytizing any other religions. As a result, the impact of this policy may influence religious minority groups' rights in practicing their religion and belief. Below it will be shown how Islamic rules regarding freedom of religion can be interpreted in some ways, particularly in a case of apostasy.

²⁰ Linda Camp Keith, "Judicial Independence and Human Rights Protection around the World," *Judicature*, Vol. 85, No. 4 (2002), pp. 195 - 200.

²¹ Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?," *The Yale Law Journal*, 111 (2002): pp. 1935-2042.

²² Todd Landman, *Protecting Human Rights: A Comparative Study* (Washington DC: Georgetown University Press, 2005), p. 73.

²³ Hathaway, "Do Human Rights Treaties, p. 2016.

Freedom of Religion in Islam

The first part of article 18 declares without reservation that the rights to freedom of thought, conscience and religion encompass freedom to change religion or belief. Based on this fact, freedom of religion as a basic human right has become an international question, particularly the practice of that right in some Islamic countries in the modern era. The question regarding this practice has emerged because the basic assumption of human rights law is that human rights are universal and that respect for human rights should not depend on any particular economic, political, or cultural context. Therefore, it is no doubt that the basic elements of the freedom of religion and belief have the status of *jus cogens* or an international customary law.²⁴ Thus, a state obliged to respect the right regardless of ratification of international text. This can be seen from the fact that more and more communities, including some Muslim communities, are beginning to realize that freedom of belief is a fundamental right. However, some Islamic states still do not allow practice of any religion but Islam openly. For example, members of Egypt's Baha'is community have found themselves cannot state their religion on the national identity cards that all Egyptians are obliged to produce to secure such things as driver's licenses and social insurance.²⁵ Meanwhile in other states, like Saudi Arabia, conversion from Islam to other religions is an offence punishable by death under apostasy law, and perhaps it is seen as a double crime against God and against political authority.

Actually, such restrictions on religious freedom are not directly a product of *shari'a*, but rather a product of rigid interpretations of Islamic law in a certain time and condition. Therefore, it is not surprised when Islamic religious doctrine and the *shari'a* law, in their traditional understanding, do not uphold the concept of human rights. Generally, the notion of right is not at the centre of Islamic justice. Rather, submission to God and duty are emphasized. The apostasy law in pre-modern *shari'a* is understood in this sense. The death penalty for apostasy is usually seen by many Muslim rulers, even until today, as a tool for preventing Muslims from converting to another religion, or for forcing intellectuals, thinkers, writers and artists to remain within

²⁴ "Freedom of Religion".

²⁵ The Economist; 2/16/2008, Vol. 386, Issue 8567, pp. 54-55.

the limitations of the established orthodoxy in a given Muslim state.²⁶ In this matter, it is important to look at what Islamic scripture states about this issue.

In classical Islamic *fiqh*, apostasy is understood to mean denying Islam after having been a Muslim; whether an apostate embraces another religion or become an atheist is irrelevant in this context.²⁷ One of the important aspects of the debate on apostasy is its punishment, death, which is specified in pre-modern *sharī'a*, and it is seen by many Muslims today as a tool for preventing Muslims from converting to another religion.²⁸ This punishment remained valid until today in some Islamic countries, when in the same time the principles of freedom of religion are gaining ground in the Muslim world. However, in other Muslims countries it becomes in active (not in force) even though it is almost nowhere expressly abolished.

Basically, there is no verse in the Qur'an stipulating a capital punishment for apostasy. On top of that, the Qur'an even advocates both freedom of religion and freedom of conscience. The foremost doctrine of Islam on this matter, as reflected in the Qur'an, teaches that there is no compulsion.

The Qur'an clearly declares *lā ikrāh fī al-dīn* (2:256) meaning that there cannot be compulsion in religion. Some commentators maintain that this verse is aimed at early converts and that it is later abrogated. But there is absolutely no basis for such an assertion. It is a declaration of a universally valid principle rather than any contextual statement. It is valid until today and will remain valid in future also. It is also substantiated by the fact that Islam accepted validity of other contemporary religions like Judaism, Christianity, Zoroastrian, and etc. The Qur'an even permitted marriages with them. They were not coerced into accepting Islam at all. Any coercion would lead to acceptance by tongue, but not endorsement by heart. Therefore, it is clear that the Qur'an support the notion of religious freedom and religious faith as an individual choice. Religious freedom is presented in the Qur'an in a variety of contexts and ways.

²⁶ Saeed and Hassan Saeed, *Freedom of Religion*, p. 2.

²⁷ Ahmed Seif al-Islam Hamad, "Legal Plurality and Legitimation of Human Rights Abuses: A Case Study of State Council rulings Concerning the Rights of Apostates," in Baudouin Dupret, Maurits Berger, and Laila Al-Zwaini (eds), *Legal Pluralism in the Arab World* (Leiden: Brill, 1999), p. 221.

²⁸ Saeed and Hassan Saeed, *Freedom of Religion*, p. 2.

Here in the above verse the word used is “*dīn*” which is usually translated as religion. But it has wider meaning. The word *dīn* not only includes the moral law but also pertains to its doctrinal contents and their practical implications, as well as to human’s attitude towards the object of his/her worship, thus comprising also the concept of “faith”. Therefore, according to the Quran human being is absolutely free to pursue religion of his/her choice. And this freedom does not pertain to only acceptance or non-acceptance of Islam; it also pertains to renunciation of Islam. Many Muslim jurists may reject this outright and maintain that though one is free to accept or not accept Islam but having accepted it one is not free to renounce it. Thus according to them freedom is limited to only acceptance or non-acceptance of Islam but not to its renunciation. This position does not appear to be logical. Freedom of conscience cannot be one-way traffic, because when it is seen from human rights discourse, the notion of freedom of religion should include the notion of freedom to its renunciation or replacing one’s current religion or belief with another or adopting atheistic views. Among the questions raised is if Islam can easily be embraced without any coercion, by the same token, Muslims should be allowed to leave it without coercion as well. This concept is actually in accordance to the notion of freedom of religion in the Quran, which states that: “Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things”.²⁹

Generally, traditionalists Muslims rarely attempted to demonstrate that the punishment for apostasy is based on the Qur’an. In almost all cases, they relied on *hadith* texts to justify it. Therefore, the death punishment laid down for apostasy is mostly derived from *hadith* texts signifying capital punishment for apostasy, as in Sahih Bukhari: “The Prophet said, if a Muslim discards his religion, kill him.”³⁰ However, Muslim scholars differ about the interpretation of this text. Some made a distinction between apostasy which accompanied by fighting against Muslims, committing a capital crime or committing an act of treason against the Islamic state. According to this interpretation, capital punishment can be adopted because of these crimes, not merely

²⁹ Quran 2:256. Yusuf Ali translation.

³⁰ Sahih Bukhari, Volume 4, Book 52, No. 260

apostate (leaving Islam). While other scholars made no such distinction. However, the first interpretation is supported by a number of other sound ḥadīths which show that when a man in Medina apostated from Islam, the Prophet neither ordered his execution nor punished him in any other way, and when the man finally left Medina, the Prophet never sent anyone to arrest him or punish him because of his apostasy.³¹

Some scholars have authoritatively shown that none of the ḥadīths about apostasy is without problem or weakness. Also, there is no ḥadīth confirming punishment or retribution solely for apostasy. In every single case, where punishment has been meted out, the apostasy (*riddah*) involved treason or rebellion. In fact, neither the Prophet Muhammad nor his companions, the models for future Islamic behaviour, ever forced anyone to embrace Islam. The prophet did not treat the apostate as an offense to be punished in his life.

Therefore, from a brief explanation above, actually there had been differences amongst Muslim jurists and scholars about the definition and punishment of apostasy under traditional Islamic law since the early time of Islam. Ibn Taymiya, for example, had observed that some of the successors to the companions of the Prophet Muhammad such as Ibn al-Nakha'i (d. 718 CE) and Sufyan al-Thawri (d. 884 CE) held the view that a Muslim apostate must never be sentenced to death but should be invited back to Islam.³² Their views actually conform to the Qur'anic rule of propagation which says: "Invite (all) to the Way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious: for thy Lord knoweth best, who have strayed from His Path, and who receive guidance."³³

Moreover, from the perspective of Islamic legal methodology (*uṣūl al-fiqh*), apostasy as a punishable offense has no strong evidence. The ḥadīth that is used to justify the death sentence for apostasy is actually doubtful if it is seen from some aspects. The hadith used is classified as 'isolated' (*ahad*) instead of 'successive' (*mutawatir*). Abu Hanifa, a prominent Muslim jurist and a founder of Hanafi School of Islamic law, argues that the manifestation or the indication of isolated hadith is

³¹ Sahih Bukhari, Volume 9, Book 89, No. 316, 318, and 323.

³² Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2003), p. 123

³³ Quran 16: 125. Yusuf Ali translation.

only probable (*ḡhanni*) instead of certain (*qat'i*). In the principle of Islamic legal methodology, an isolated hadith cannot abrogate the general meaning of a Qur'anic verse, because the Qur'anic verses are considered certain in their source (*qat'ie al-wurud*), while isolated hadiths are considered 'probable' or 'likely' in their source (*ḡhanni al-wurud*). The *ḡhanni* cannot abrogate the *qat'i*.

Furthermore, no single verse of the Qur'an declares that apostates should be punished by death. But, Qur'an clearly guarantees freedom of religion as seen from many verses. This fact indicates that the justification of hadith to punish an apostate by death is weak, because it is in conflict with the fundamental of Islamic legal source, the Qur'an, which supports the freedom of religion. Therefore, the meaning of the hadith cannot abrogate the general principle of the Qur'an.

Additionally, the Islamic history indicates that Prophet Muhammad had never punished the apostates whatsoever. Several classical literatures mention that in the days of Prophet Muhammad, there were at least twelve Muslims reverted from Islam, such as al-Harith ibn Suwayd al-Ansari, who then moved away from Medina to Mecca, and Ubaydullah ibn Jahsh, who went to Abyssinia when he converted to Christian. However, during his lifetime, the Prophet did not command his companions to chase and punish them although they committed apostasy.

That interpretation would perhaps be in consonance with the argument of contemporary Islamic scholars. Many of the scholars and jurists define apostasy law with death penalty in terms of rebellion against the state, where a Muslim-subject of the Islamic state after denouncing Islam joins with those who takes arms against the Islamic state and thus commits a political offence against the state.³⁴ This law developed as a result of specific socio-political contexts in which Muslims lived at the time. Meanwhile, apostasy in the sense of an individual denouncing Islam without more, there is no worldly punishment stipulated in the Qur'an, but the punishment described in the Qur'an is only something related to punishment in the hereafter.³⁵

Contemporary Muslim scholars have found many indications that the pre-modern shari'a rule stating the apostate must be killed should not be taken to be the definitive interpretation, because the conception

³⁴ Baderin, *International Human Rights*, p. 124.

³⁵ Qur'an, 2:217.

of apostasy is to be punished with death seems to have arisen from the fact that people who committed an apostasy and joined the enemy, were treated as enemies, or that, where an apostate took the life of a Muslim, he was put to death, not for changing his religion, but for committing murder. On top of that, the Quránic principles of religious freedom basically share common foundations with the Western concept of religious liberty. Belief in any religion should be voluntary and a private matter.

Restrictions on Religious Freedom in Indonesia

According to Stahnke and Blitt, there are four categories of countries which have majority Muslim population. The first is countries which declare themselves as an Islamic-State; the second category is countries stating Islam as the official religion of the state; the third is countries declaring themselves as secular-state; and the fourth category is countries which have not made any constitutional declaration concerning the Islamic or secular nature of the state, and have not made Islam as the official state religion.³⁶ Therefore, according to this division, Indonesia is part of the last category.

Stahnke and Blitt say that under international human rights standards, a state can adopt a particular relationship with a religion of the majority of the population including establishing a state religion. They also say that such a relationship does not result in violations of the civil and political rights of, or discrimination against, adherents of other religions or non-believers.³⁷ However, many human rights violations happen in Muslim countries whatever their constitutional recognition of a state religion. Indonesia is one of the Muslim countries which remain restricting the rights to freedom of thought, conscience, and religion or belief, even though the country has constitutional provisions regarding human rights protection, as explained above.

In Indonesia, the legal and constitutional guarantees of religious freedom have not been fully borne out in practice. Some restrictions continually exist on some types of religious activities. Moreover,

³⁶ Tad Stahnke and Robert C. Blitt, "The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitution of Predominantly Muslim Countries," *Georgetown Journal of International Law*, Vol. 36 (2005): pp. 947-1078.

³⁷ Ibid.

according to the report released by the U.S. State Department, security forces occasionally tolerated discrimination against and abuse of religious groups done by private actors, however the government failed to punish perpetrators.³⁸

This condition could be caused by the government's policy and law which would legally permit tightened restrictions on religious liberty if conditions changed. Gvosdev says that some 'democratic' countries have some strategies by which governments can legally restrict religious freedom. The most obvious method is the insertion of provision of state's interests into the constitution, "which grants to the government the power to proscribe groups and practices deemed to be in conflict with state goals".³⁹ In Indonesian case, Gvosdev found that the Indonesian government had enacted some rules "redefining 'religious freedom' in a narrower or more restrictive fashion than general understanding".⁴⁰ Hence, the Indonesian government actually has been maintaining a right to define what constitutes a religion in the country, and has ensured through its policies that its citizens follow an acceptable religious faith.⁴¹ Therefore, even though the Indonesia's constitution guarantees freedom of religion to its citizens,⁴² the provision should be interpreted as 'freedom of worship', not 'freedom to practice on their beliefs'. This is because the government officially recognizes only six religions and restricts certain types of religious activities legally, particularly among unrecognized religions and sects of recognized religions considered "deviant".⁴³ For example, local traditional religions (animists), Ahmadis, Baha'is, and members of

³⁸ U.S. Department of State, Bureau of Democracy, Human Rights and Labour, *Annual Report on International Religious Freedom: Indonesia* (2008), retrieved from: <<http://www.state.gov/g/drl/rls/irf/2008/108407.htm>>

³⁹ Nikolas K. Gvosdev, "Constitutional Doublethink, Managed Pluralism and Freedom of Religion," *Religion, State & Society*, Vol. 29, No. 2 (2001).

⁴⁰ Ibid.

⁴¹ Rita Smith Kipp and Susan Rodgers, "Introduction: Indonesian Religions in Society," in Rita Smith Kipp and Susan Rodgers (eds), *Indonesian Religions in Transition* (Tucson: University of Arizona Press, 1987), p. 23.

⁴² Article 29 (2) of the Indonesian Constitution.

⁴³ U.S. Department of State, Bureau of Democracy, Human Rights and Labour, *Annual Report on International Religious Freedom*.

other small minority faiths found it difficult to register marriages or births.⁴⁴

Moreover, the government requires all adult citizens to hold a National Identity Card (ID card) which , identifies the holder's religion. The members of religions who are not recognized by the government are generally unable to obtain an ID card unless they incorrectly identify themselves as belonging to a recognized religion. Some human rights groups found that some local Civil Registry officials rejected applications submitted by members of unrecognized or minority religions but issued the Identity Card that inaccurately reflected the applicants' religion. Some animists received ID cards that listed their religion as Islam. Many Sikhs registered as Hindu on their ID cards and marriage certificates because the Government does not officially recognize their religion.⁴⁵

According to Salim, the discrimination against citizen with unrecognized religions actually stems from the misinterpretation of a Soekarno-era presidential decree No. 1/1965 on the Prevention of Abuse and Disrespect of Religion.⁴⁶ The elucidation to this decree listed the six religions to which most Indonesian people adhere: Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism. In 1967, under Presidential Instruction No. 14/1967, President Soeharto dropped Confucianism from the list of recognized religions because of its allegedly strong relationship with communism. Salim argues that both decrees were not meant to imply that those religions were the only religions that were officially acknowledged, but since 1974 (after the enactment of Marriage Act No. 1/1974), religion has become a decisive factor in validating marriages, and the term 'religion' has been interpreted based on previous regulations, i.e. on the last decree in particular.⁴⁷ Moreover, regulations on identity cards require their holders to indicate their religion, which result in discrimination

⁴⁴ The Tandem Project, United Nations, Human Rights & Freedom of Religion or Belief, 2008, retrieved from: <http://www.tandemproject.com/issue_statements/statements/-072408_upr_files/072408_upr.pdf>

⁴⁵ Ibid.

⁴⁶ Arskal Salim, "Muslim Politics in Indonesia's Democratization: The Religious Majority and the Rights of Minorities in the Post-New Order Era," in Ross H. McLeod and Andrew MacIntyre, *Indonesia: Democracy and the Promise of Good Government* (Singapore: ISEAS, 2007), p. 116.

⁴⁷ Ibid.

against the citizens who subscribe to religions other than any of the six major religions.⁴⁸ Fortunately, in 2001, President Abdurrahman Wahid annulled that instruction, allowing Confucianism to once again become a recognized religion in Indonesia. However, other minority religions still do not enjoy the same rights and protection from the government.

Not only related to the issuance of ID cards for people with unrecognized religions, the construction and expansion of houses of worship are also restricted. The Indonesian government continued to restrict the construction and expansion of houses of worship by issuing Joint Ministerial Regulation (No. 9/2006 of the Minister of Religion and No. 8/2006 of the Minister of Home Affairs) on the Establishment of Places of Worship,⁴⁹ and it also maintained a ban on the use of private homes for worship unless the local community approved and a regional office of the home affairs ministry provided a license.⁵⁰ Christians in Indonesia feel increasingly uneasy, especially after some Islamists forced several unlicensed churches to shut down.⁵¹ Besides sealing several churches across Indonesia, some Islamists have also damaged mosques and other facilities belonging to the Ahmadiyah group.⁵²

That is because the new decree stipulates that any attempt to set up a house of worship must take into account the religious composition of the district where it is expected to stand. If authorities find a request fits the composition, applicants need to show at least 90 people in the area will use the facilities and that at least 60 other residents from other religions approve of having it in their neighborhood.⁵³

Furthermore, regarding to the freedom of religious sects in practicing on their beliefs, the Indonesian government continued to restrict the religious freedom of groups associated with forms of Islam

⁴⁸ Ibid.

⁴⁹ This decree replaced a 1969 decree that had been blamed for allowing mob action directed to the destruction or closure of a number of illegal places of worship. See Salim, "Muslim Politics in Indonesia's Democratization", p. 116; and Melissa Crouch, "Regulating Places of Worship in Indonesia: Upholding Freedom of Religion for Religious Minorities?," *Singapore Journal of Legal Studies* (2007): pp. 96-116.

⁵⁰ Salim, "Muslim Politics in Indonesia's Democratization", p. 116.

⁵¹ U.S. Department of State, Bureau of Democracy, Human Rights and Labour, *Annual Report on International Religious Freedom*.

⁵² Ibid.

⁵³ Salim, "Muslim Politics in Indonesia's Democratization", p. 116.

viewed as outside the mainstream. In 2005, an Islamic religious leader in East Java, Mohammad Yusman Roy, was prosecuted and jailed for promoting the use of Indonesian language prayer. He was charged with “despoiling an organized religion”, a crime that carries a maximum punishment of 5 years in jail.⁵⁴

Moreover, on June 9, 2008, the Indonesian government, Religious Affairs Minister, Home Minister, and Attorney General issued a decree tightening restrictions on the minority Ahmadiyah community.⁵⁵ The decree orders the Ahmadiyah to “stop spreading interpretations and activities which deviate from the principal teachings of Islam,” including “the spreading of the belief that there is another prophet with his own teachings after Prophet Muhammad”. Violations of the decree are subject to up to five years of imprisonment.⁵⁶

Conclusion

There are many provisions in the Indonesia’s constitution and its legal system which is supportive of human rights. The Indonesia’s constitution contains no specific reference to any religions which means all religions and beliefs have the same status in the constitution. Any attempts to prohibit certain religious freedom would therefore infringe the constitution. However, some provisions on discretionary powers granted by the government have made serious implications for human rights. The Indonesian government has enacted some rules redefining religious freedom in a narrower or more restrictive fashion than general understanding.

Based on the government regulations, Indonesian government has been maintaining a right to define what constitutes a religion in the country, and has been ensuring through its policies that its citizens follow an acceptable religious faith. Moreover, legal restrictions still continue on certain types of religious activities, particularly among unrecognized religions and “deviant” sects of recognized religions.

The regulations were enacted just for the sake of complying with certain Islamists groups’ demands. In other words, the governmental

⁵⁴ U.S. Department of State, Bureau of Democracy, Human Rights and Labour, *Annual Report on International Religious Freedom*.

⁵⁵ Philip Setunga, “Religious Freedom not Secure in Indonesia,” *World Wide Religious News (WWRN): Asia/Pacific-Indonesia/Brunei*, retrieved from: <<http://www.wwrn.org/article.php?idd=28810&sec=61&con=19>>

⁵⁶ Ibid.

regulations were ruled based on social considerations, rather than to strengthen constitutional tenets on freedom of religion and beliefs. []

References

Books and Articles

- Asian Human Rights Commission (AHRC). "Indonesia: Ratification of Key Human Rights Instruments Must be Followed by Legal Reform." a Statement by the Asian Human Rights Commission, retrieved from: <<http://www.ahrchk.net/statements/mainfile.php/2006statements/457/>>
- Baderin, Mashood A. *International Human Rights and Islamic Law*. Oxford: Oxford University Press, 2003.
- Bukhari, al-, *Sahih Bukhari*, Volume 4 and 9.
- Charter of the United Nations (1945)
- Crouch, Melissa. "Regulating Places of Worship in Indonesia: Upholding Freedom of Religion for Religious Minorities?." *Singapore Journal of Legal Studies* (2007): pp. 96-116.
- Dickson, Brice. "The United Nations and Freedom of Religion." *International and Comparative Law Quarterly*, vol. 44, issue 2 (1995).
- Dixon, M. *Textbook on International Law*. 3rd edition. London: Blackstone, 1996.
- Dupret, Baudouin, Maurits Berger, and Laila Al-Zwaini (eds.). *Legal Pluralism in the Arab World*. Leiden: Brill, 1999.
- Electronic Resource Centre for Human Rights Education, retrieved from: http://www.hrea.org/erc/Library/First Steps/part1_eng.html
- Forum 18. "Freedom of Religion: A Report with Special Emphasis on the Right to Choose Religion and Registration Systems." *Forum 18*, retrieved from: <http://www.forum18.org/PDF/freedomofreligion.pdf>
- Gvosdev, Nikolas K. "Constitutional Doublethink, Managed Pluralism and Freedom of Religion." *Religion, State & Society*, Vol. 29, No. 2 (2001).

- Hathaway, Oona A. "Do Human Rights Treaties Make a Difference?." *The Yale Law Journal*, 111 (2002): pp. 1935-2042.
- Keith, Linda Camp. "Judicial Independence and Human Rights Protection around the World." *Judicature*, Vol. 85, No. 4 (2002): pp. 195 – 200.
- Kipp, Rita Smith and Susan Rodgers. "Introduction: Indonesian Religions in Society." in Rita Smith Kipp and Susan Rodgers (eds). *Indonesian Religions in Transition*. Tucson: University of Arizona Press, 1987.
- Landman, Todd. *Protecting Human Rights: A Comparative Study*. Washington DC: Georgetown University Press, 2005.
- Macklem, Patrick, "What is International Human Rights Law? Three Applications of a Distributive Account." Bernard and Audre Rapoport Center for Human Rights and Justice University of Texas School of Law, November 19, 2007, retrieved from: <http://www.utexas.edu/law/academics/centers/humanrights/publications/macklem_texas_paper.pdf>
- McLeod, Ross H. and Andrew MacIntyre. *Indonesia: Democracy and the Promise of Good Government*. Singapore: ISEAS, 2007.
- Pierre, Richard and Burns H. Weston (eds). *Human Rights in the World Community: Issues and Action*. Philadelphia: University of Pennsylvania Press, 2006.
- Saeed, Abdullah and Hassan Saeed. *Freedom of Religion, Apostasy and Islam*. Burlington, VT: Ashgate Publisher, 2002.
- Setunga, Philip. "Religious Freedom not Secure in Indonesia." *World Wide Religious News (WWRN): Asia/Pacific-Indonesia/Brunei*, retrieved from: <<http://www.wwrn.org/article.php?idd=28810&sec=61&con=19>>
- Stahnke, Tad and Robert C. Blitt. "The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitution of Predominantly Muslim Countries." *Georgetown Journal of International Law*, Vol. 36 (2005): pp. 947-1078.
- The Economist; 2/16/2008, Vol. 386, Issue 8567, p. 54-55.
- The Tandem Project, United Nations, Human Rights & Freedom of Religion or Belief, 2008, retrieved from: <<http://www.tandemp->

project.com/issue_statements/statements/072408_upr_files/072408_upr.pdf>

- U.S. Department of State, Bureau of Democracy, Human Rights and Labour, *Annual Report on International Religious Freedom: Indonesia* (2008), retrieved from: <<http://www.state.gov/g/drl/rls/irf/-2008/108407.htm>>
- U.S. Department of State, Bureau of Democracy, Human Rights and Labour, *Annual Report on International Religious Freedom: Indonesia* (2007), retrieved from: <<http://www.state.gov/g/drl/rls/irf/-2007/90137.htm>>
- U.S. Department of State, Bureau of Democracy, Human Rights and Labour, *Annual Report on International Religious Freedom: Indonesia* (2005), retrieved from: <<http://www.state.gov/g/drl/rls/irf/2-005/51512.htm>>
- UN General Assembly Resolution 719 (VII); 1953, and UN General Assembly Resolution 285 (111); 1949.
- Witte, John, Jr. and D. van der Vyver. (eds). *Religious Human Rights in Global Perspective: Legal Perspective*. The Hague: Martinus Nijhoff Publishers, 1996.
- Zamir, M. *Human Rights Issues and International Law*, Dhaka: University Press, 1990.